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6 **IN THE UNITED STATES DISTRICT COURT**
7 **WESTERN DISTRICT OF WASHINGTON**
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10 NAKISHA PERRY,

11 Plaintiff,

12 v.

13 UNITED STATES OF AMERICA;
14 JOELLE LUCAS, M.D.; and UNKNOWN
15 JOHN DOES AND JOHN DOE CLINICS,

16 Defendants.
17

Case No.:

COMPLAINT FOR DAMAGES

18 **I. JURISDICTION AND VENUE**

19 1.1 This action is brought under the authority of the Federal Tort Claims Act,
20 Title 28, § 2671 and Title 28, § 1346(b) of the United States Code.

21 1.2 Pursuant to 28 USC § 2672 and 2675(a) Plaintiff filed and presented
22 administratively a claim for damages on Standard Form 95 to Defendant's agency, the Veterans
23 Administration, more than six months prior to filing this action. Plaintiff submitted the Standard
24 Form 95 on August 4, 2021. The Veterans Administration never responded. The option to file suit
25 has now accrued and this action is filed within the time limits established by the Federal Tort
26 Claims Act.

27 COMPLAINT FOR DAMAGES - 1 -
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1.3 Plaintiffs have complied with all requirements of the Federal Tort Claims Act, Title 28, § 2671, et seq. and Title 28, § 1346(b) of the United States Code. This matter is ripe for filing.

1.4 Venue is proper in the above-captioned District Court pursuant to 28 USC § 1391(e) due to the acts and omissions of defendant's employees in the above-captioned judicial district.

1.5 The United States of America may be served with process in accordance with Rule 4(1) of the Federal Rules of Civil Procedure by serving a copy of the Summons and Complaint on Nicholas W. Brown, U.S. Attorney, 700 Stewart Street, Suite 5220, Seattle, WA, 98101-1271, to the attention of the Civil Process Clerk, and by serving a copy of the Summons and Complaint on Merrick B. Garland, Attorney General of the United States, by certified mail, return receipt requested, at the United States Department of Justice, 950 Pennsylvania Avenue NW, Washington, D.C. 205330-0001, to the attention of the Civil Process Clerk.

II. PARTIES

2.1 Nakisha Perry was at all times relevant to this action a patient of Defendants through the VA Puget Sound Health System, Seattle Division. Nakisha Perry is a resident of the State of Idaho.

2.2 Defendant United States of America is named on the basis of the determination pursuant to 28 U.S.C. Sec. 2671 that VA Puget Sound Health Care System and its physicians, employees, and agents, to include but not limited to Joelle Lucas, M.D. is an employee and/or agent of the Government. All acts and omissions of the employees and physicians who performed surgery and/or provided health care to Nakisha Perry were acts or omissions on behalf of the

1 United States, the U.S. Department of Veterans Affairs and/or the VA Puget Sound Health Care
2 System.

3 2.3 Defendant Joelle Lucas is a physician and employee or agent of the VA Puget
4 Sound Health System, Seattle Division. She provided medical care to Plaintiff Nakisha Perry
5 during the period of time material to this complaint. Defendant Joelle Lucas may also have been
6 at the times relevant to Plaintiff's care acting independent of her employment or agency at the
7 VA Puget Sound Health System.
8

9 2.4 Plaintiff alleges that there may be other health care providers, persons, or entities
10 whose negligence contributed to Plaintiff's injuries and damages, but whose identity is not now
11 known and who are referred to herein as Unknown John Does. Plaintiff requests that these
12 pleadings be amended to reflect the true identities of these Defendants if and when they are
13 identified.
14

15 2.5 Plaintiff alleges that there may be other Clinics, Corporations or Partnerships that
16 employed individuals mentioned in the paragraphs above, such as to make those John Doe Clinics,
17 Corporations or Partnerships responsible, whose negligence contributed to Plaintiffs' injuries and
18 damages, but whose identity is not now known and who are referred to herein as Unknown John
19 Doe Clinics, Corporations or Partnerships. Plaintiffs request that these pleadings be amended to
20 reflect the true identities of these Defendants if and when they are identified.
21

22 III. FACTS

23 3.1 On April 19, 2021, Nakisha Perry presented to the Veterans Administration Puget
24 Sound Health System, Seattle Division, for surgery.
25
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1 3.2 Ms. Perry presented for surgery after having been diagnosed with uterine
2 leiomyomas, uterine hypertrophy, abnormal uterine bleeding with heavy and regular flow and
3 intermittent secondary anemia, secondary dysmenorrhea, and urinary frequency secondary to
4 uterine leiomyomas (fibroids or noncancerous growths of the uterus).

5
6 3.3 The procedure to be performed was a Da Vinci robot assisted laparoscopic
7 myomectomy with mini-laparotomy for specimen retrieval. Dr. Joelle Lucas was the surgeon
8 performing the procedure.

9 3.4 Ms. Perry was brought into the operating room at 7:44 a.m. and the procedure
10 began at 8:34 a.m. The procedure did not end until 4:10 p.m.—more than nine hours later. The
11 procedure was originally planned to take three to four hours.

12
13 3.5 During the procedure, almost 400 grams of fibroids were removed in addition to a
14 700 cc of estimated blood loss to Ms. Perry.

15 3.6 During this procedure, Dr. Lucas negligently created a 1 cm perforation at the
16 mesenteric edge of Ms. Perry's mid jejunum segment (small bowel) which was not discovered
17 for several days.

18
19 3.7 In the days following the April 19, 2021, surgery, Ms. Perry developed distributive
20 septic shock and respiratory failure.

21 3.8 On April 20, 2021, Ms. Perry had an acute onset of tachycardia and hypoxia. She
22 was transferred to the ICU. Defendants negligently failed to diagnose the source of her
23 deteriorating condition.

1 3.9 On April 22, 2021, Ms. Perry developed increasing abdominal pain with lactic
2 acidosis. CT scans of her abdomen and pelvis showed increasing free air, which was concerning
3 for bowel injury. She was rushed urgently to the operating room.

4 3.10 As a result of this deterioration, she presented for a second procedure—an
5 exploratory laparotomy—on April 22, 2021, to determine the source of her symptoms. During
6 this procedure, Dr. Deborah Marquardt located the 1 cm perforation of Ms. Perry's small bowel.
7 She discovered 1.5 liters of bowel fluid content in the peritoneal cavity, feculent peritonitis and
8 an old hematoma in the abdominal wall. Due to the degree of abdominal contamination, edema,
9 inflammation, and a need for ongoing resuscitation, the surgical site was not completely closed
10 and was instead packed with wound dressing.

11 3.11 Following the procedure, Ms. Perry was transferred back to the intensive care unit,
12 intubated and deemed in critical condition.

13 3.12 She underwent another procedure by Dr. Marquardt on April 25, 2021—a bowel
14 washout, anastomosis (connecting the disconnected portions of bowel), and closure.

15 3.13 Following this procedure, she was returned to the surgical ICU to continue her
16 post-operative care. She continued to be intubated in the ICU.

17 3.14 She was not extubated until April 27, 2021.

18 3.15 Ms. Perry remained in the hospital until May 3, 2021, when she was discharged
19 with open wounds which required ongoing wound care. Her original estimated discharge date
20 was April 20, 2021.

3.16 Ms. Perry has suffered considerable pain, both emotional and physical, discomfort and extensive rehabilitation as a result of her care on and following April 19, 2021, that continues to the present day.

3.17 The Department of Veteran Affairs is an agency of the United States of America. The United States of America through its agency, at all times material, owned, operated, and controlled the health care facility known as Veterans Administration Medical Center, located in Seattle, WA.

3.18 Dr. Joelle Lucas and all other healthcare providers who treated Nakisha Perry from April 19, 2021, through May 3, 2021, were acting within their scope of employment as employees of the Veterans Administration Medical Center, located in Seattle, WA.

3.19 Defendants violated the standard of care of reasonably prudent healthcare providers under similarly situated circumstances in the performance of the April 10, 2021 surgery and follow-up care.

3.20 As a result, Ms. Perry has suffered significant and permanent injuries.

IV. CAUSES OF ACTION

4.1 This is a Federal Tort Claims Action for monetary damages sustained by Plaintiff resulting from personal injuries as a result of medical negligence. As alleged above, the VA Puget Sound Health Care System and its employees are employees/agents of the Government pursuant to 28 U.S.C. Sec. 2671. Therefore, the proper defendant in this matter is the United States of America.

4.2 Medical Negligence. Plaintiff's injuries and all damages that result from them were proximately caused by Defendant's negligent care. Defendant United States of America, by

1 and through its employees and agents, VA Puget Sound Health Care System, and Doctor Joelle
2 Lucas failed to exercise the degree of care, skill and learning expected of reasonably prudent
3 health care providers in the same profession or class in the State of Washington acting in the same
4 or similar circumstances. Such conduct proximately caused severe and permanent injuries and
5 damages to plaintiff. Such conduct establishes claims under RCW 4.24, RCW 7.70 and other
6 applicable law.

8 4.3 Defendant United States is responsible, by agreement, contract, and respondeat
9 superior for the acts and omissions of Joelle Lucas, M.D. and other treating providers, who
10 performed surgery and subsequent care to Plaintiff on and after April 19, 2021.

11 4.4 Negligence. The VA Puget Sound Health Care System and Joelle Lucas, M.D.
12 failed to exercise the degree of care, skill and learning expected of reasonably prudent health care
13 providers in the same profession or class in the State of Washington acting in the same or similar
14 circumstances. If the actions of defendant fall outside of these parameters, negligence has
15 occurred.

16 4.5 Informed Consent. Defendant United States of America, by and through its
17 employees and agents, he VA Puget Sound Health Care System, and Joelle Lucas, M.D, breached
18 their duties to inform plaintiff of all material facts; including risks and alternatives, which a
19 reasonably prudent patient would need to make an informed decision on whether to consent to or
20 reject proposed courses of treatment. This conduct proximately caused injury to Plaintiff.

21 4.6 Corporate Negligence. Defendant United States is liable under the doctrine of
22 corporate negligence, WPI 105.02.02. Defendant Hospital owes an independent duty of care to
23 its patients and has a duty to exercise the degree of skill, care, and learning expected of a

1 reasonably prudent hospital. Defendant is responsible for all acts and omissions of its employees,
2 agents, independent contractors and is responsible for adequate supervision of its staff members.
3 Defendant United States of America is further responsible for implementing policies and
4 procedures to ensure proper staffing and credentialing.
5

6 4.7 Such above failures were a proximate cause of Plaintiff's injuries.

7 **V. DAMAGES**

8 5.1 As a direct and proximate cause of Defendants' negligent acts and omissions,
9 Plaintiff Nakisha Perry has incurred medical bills and bills for treatment, lost wages, and other
10 damages and is entitled to recover for pain and suffering, and the full value of all other categories
11 of damages permissible by law.
12

13 **VI. RELIEF**

14 Wherefore, the Plaintiff prays as follows:
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16 6.1 For judgment in favor of Plaintiff and against the Defendants.
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18 6.2 For an award of damages in favor of the Plaintiff and against the Defendants in
19 amounts to be proven at trial.

20 6.3 For an award of prejudgment interest at the statutory rate on Plaintiff's economic
21 Damages.

22 6.4 For an award of prejudgment interest on Plaintiff's non-economic damages to the
23 Extent allowed by law.

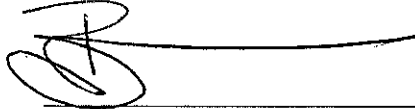
24 6.5 For an award of Plaintiff's costs and disbursements herein.

25 6.7 For an award of attorney's fees.
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1 6.8 For such further relief as to the Court deems just.

2 DATED this 22nd day of June 2022

3 MILLER OLSEN, PLLC

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5 _____
6 Amy Miller, WSBA #40620
7 Bryan Olsen, WSBA #43498
8 Attorneys for Plaintiff

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